

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DOLLAND MOODY</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 233,249
<b>PIPING DESIGN SERVICES</b>	)	
Respondent	)	
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

By its unpublished opinion filed September 14, 2001, the Kansas Court of Appeals remanded this claim for the Board to modify its November 17, 2000 Order. No petition for review was filed with the Kansas Supreme Court and, accordingly, the Court of Appeals' order for remand is now final. The Board did not conduct oral argument but, instead, requested the parties to brief the issues presented by the order for remand.

**APPEARANCES**

Gary A. Winfrey of Wichita, Kansas, appeared for claimant. Gregory D. Worth of Roeland Park, Kansas, appeared for respondent and its insurance carrier.

**ISSUES**

This is a claim for an August 15, 1997 accident and resulting back injury. In the November 17, 2000 Order, this Board found claimant sustained a 59.5 percent permanent partial general disability based upon a 56 percent task loss and a 63 percent wage loss. The Board noted that although claimant earned different wages during different periods following the accident, the different work disability ratings (ratings higher than the functional

impairment rating) would not affect the total benefits due and owing claimant.<sup>1</sup> Therefore, rather than breaking the award down into separate periods reflecting the various work disability ratings, the Board only used the final 59.5 percent work disability rating in computing the award.

The respondent and its insurance carrier appealed the Board's November 17, 2000 Order to the Court of Appeals. One of the issues presented to the Court of Appeals was the post-injury wage that should be used in computing claimant's permanent partial general disability under the formula set forth in K.S.A. 1997 Supp. 44-510e.

In its September 14, 2001 unpublished opinion, the Court of Appeals directed the Board to use a \$690 post-injury wage for the period following claimant's employment at another employer, Precision Profile, which the Court of Appeals found started sometime in February 1999. Additionally, despite the Board's statement in the November 17, 2000 Order that it had determined the different work disability ratings for the different periods of claimant's post-injury employment and unemployment would not change the amount of benefits to which claimant was entitled, the Court of Appeals determined the Board had erred in only considering claimant's last post-injury wage. The Court of Appeals stated that claimant's "average wage should be calculated based on all of his post-injury employment."

After the Court of Appeals' decision became final, the Board requested the parties to brief the issues created by the remand. The parties complied. The parties now request the Board to enter an award based upon a 56 percent task loss and a 44 percent wage loss, creating a 50 percent work disability.

Respondent and its insurance carrier, after recognizing that claimant will be awarded the same number of weeks of permanent partial disability benefits whether the Board sets out the various periods of claimant's post-injury employment and unemployment or whether the Board merely enters the award using claimant's last permanent partial general disability rating, conclude their brief to the Board, in part:

For the reasons set forth above, this Court should enter an award of compensation in whatever detail it believes necessary, so long as the Award results in claimant being compensated for a 50% work disability. . . .

Similarly, claimant concludes his brief to the Board, as follows:

---

<sup>1</sup> This was true as both the 59.5 percent work disability rating and the actual work disability ratings generated the same number of permanent disability benefits for each of those periods.

Claimant does not contest the "time line" set out in respondent's brief to the Board. Claimant agrees that the present evidence in this claim supports a finding of a wage loss of 44%, a task loss of 56% and a permanent partial disability of 50%.

The only issue presented to this Board in this remand is the extent of claimant's permanent partial general disability, which the parties now acknowledge is 50 percent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Board finds and concludes:

1. Claimant's post-injury average weekly wage is \$690, commencing February 1, 1999.
2. Considering the different periods of claimant's post-injury employment and unemployment, the Board finds claimant is entitled to an award for a 50 percent permanent partial general disability.
3. Claimant is entitled to the same number of weeks of benefits during his different post-injury periods of employment and unemployment whether that period is based upon claimant's latest average weekly wage and resulting 50 percent work disability or whether it is based upon each respective period's actual average weekly wage and resulting work disability.
4. The Board adopts the findings and conclusions set forth in its November 17, 2000 Order that are not inconsistent with the above.

**AWARD**

**WHEREFORE**, the Board modifies its November 17, 2000 Order by reducing claimant's permanent partial general disability from 59.5 percent to 50 percent.

Dolland Moody is granted compensation from Piping Design Services and its insurance carrier for an August 15, 1997 accident and resulting disability. Based upon an average weekly wage of \$1,235, Mr. Moody is entitled to receive 30.86 weeks of temporary total disability benefits at \$351 per week, or \$10,831.86, plus 199.57 weeks of permanent partial disability benefits at \$351 per week, or \$70,049.07, for a 50 percent permanent partial general disability, making a total award of \$80,880.93, which is all due and owing less any amounts previously paid.

The Board also adopts all other orders that are not inconsistent with the above that were entered by the Board's November 17, 2000 Order or the March 30, 2000 Award that was entered by Judge Nelsonna Potts Barnes in this claim.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2002.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Gary A. Winfrey, Attorney for Claimant  
Gregory D. Worth, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director